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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/660,015	09/11/2003	Walter Schreiber	CAO-0428	5914
23413	7590	06/05/2006	EXAMINER	
CANTOR COLBURN, LLP 55 GRIFFIN ROAD SOUTH BLOOMFIELD, CT 06002			ALI, SHUMAYA B	
			ART UNIT	PAPER NUMBER
			3743	

DATE MAILED: 06/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/660,015

Applicant(s)

SCHREIBER, WALTER

Examiner

Shumaya B. Ali

Art Unit

3743

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 9/3/06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 1-23 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-23 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☒ Other: detailed action.

***Election/Restrictions***

In response to election/restriction mailed on 12/13/2005 the Applicant has elected group I, claims 1-23 without traverse. Claims 24-29 are withdrawn. Currently claims 1-23 are pending.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. **Claims 1-10, 16-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. US Patent No. 6,408,981 B1 in view of Non-patent literature to Baril, 2004, Cut Smart Engineering & Manufacturing, Inc.**

3. **As to claims 1, 18-21** Smith et al. disclose a monolithic earplug being compressible (see abstract), resilient material (“soft and flexible to provide a comfortable fit for the wearer”, col.3 lines 25-26). Smith et al. disclose an alternative method of making the earplug, however teaches that the monolithic structure may be cut into discrete pieces using any of variety of conventional cutting devices including water jet (col.5 lines 60-63). **As to claim 2**, Smith et al. discloses earplug as stated above for claim 1; therefore, method step as cited in claim 2 would have been obvious steps in making earplug. Although Smith et al. do not provide detail steps of water jet

Art Unit: 3743

cutting method as claimed by the applicant, however those steps would be considered obvious to one of ordinary skills when manufacturing earplugs using water jet cutting methods, and such method steps are well known in the art. Baril teaches waterjet cutting is a processing tool that uses high pressure water, thereby reciting limitation of **claims 1, 3, and 16** (activating the water jet assembly to emit a high pressure water stream) for cutting many soft and semi-rigid materials like paper, plastic, and foam (further suggesting process can be applied for making earplug, which are conventionally made from resilient foam material). Therefore, limitation of **claims 4-6** would be considered obvious steps in utilizing waterjet cutting device. **As to claim 7**, Baril teaches high-pressure water (50,000-60,000 psi) passes through a jeweled orifice that ranges from 0.003 to 0.013 inches and the flow enters a mixing tube or nozzle that ranges in size from 0.015 inches through 0.05 inches in diameter. Baril further teaches the stream of water causes a vacuum which draws finely crushed garnet (the abrasive) and as the water enters the mixing tube it mixes with the garnet, exiting from the tube at incredible forces making contact with the material to be cut, thereby further reciting limitations of **claims 7-10, 17, and 21-23**. Since Smith et al. disclose method of making earplug and Baril teaches using a water jet cutting method to manufacture earplugs as required by the applicant's claimed invention, then why wouldn't it be obvious to apply the teachings of Baril to the invention of Smith et al. as an alternative efficient cutting methods for manufacturing earplugs because Baril further teaches waterjet cutting provides extremely accurate cuts with a high degree of repeatability over a wide range of materials and shapes.

Art Unit: 3743

4. **Claims 11-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Smith et al. US Patent No. 6,408,981 B1 and Non-patent literature to Baril, 2004, Cut Smart Engineering & Manufacturing, Inc and in view of Williams US Patent No. 5,573,015**

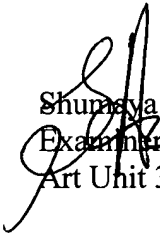
5. **As to claims 11-15, Smith et al method of forming earplug as modified by Baril teaches limitations cited for claims 1-10, and 15-23 above except for limitations cited in claims 11-15.** However, earplug with hole extending along a longitudinal axis of the earplug entirely through the earplug and a stem being inserted in the hole as cited in claims 11-15 are well known in the art. Williams teaches earplug in figures 1-8 with core 12 inherently situated inside a channel or hole with stiffer material, i.e. semi-rigid in order that it can provide structural rigidity for the earplug (see col.3 lines 29-38). Therefore, it would have been obvious to one of ordinary skills in the art at the time of the invention to modify the earplug of Smith et al. in view of Williams for the purposes of providing rigidity to the earplug. Since Williams teaches structural limitation cited in claims 11-15, the method steps would have been obvious to yield the final outcome of the product/earplug.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Shumaya B. Ali whose telephone number is 571-272-6088. The examiner can normally be reached on M-F 8:30-4:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Henry Bennett can be reached on 571-272-4791. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3743

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Shumaya B. Ali  
Examiner  
Art Unit 3743

5/30/06

  
Henry Bennett  
Supervisory Patent Examiner  
Group 3700